



Legislative Research Council

RULES REVIEW COMMITTEE MINUTES

**Three hundred thirty-seventh meeting
Tuesday
November 12, 2013**

**Room 414
State Capitol
Pierre, South Dakota**

The three hundred thirty-seventh meeting of the Rules Review Committee was called to order by Chair Representative Timothy Johns at 9:02 a.m. CT, on November 12, 2013, in Room 414 at the State Capitol, Pierre, South Dakota and via the Digital Dakota Network (DDN) at the following locations: Department of Human Services, 2361 Dakota Ave. S., Huron, South Dakota; Mitchell Technical Institute, 1800 E. Spruce, Room TC 155, Mitchell, South Dakota; South Dakota School of Mines and Technology, 501 E. St. Joseph St., Room CB 109, Rapid City, South Dakota; and the Department of Transportation, 1306 W. 31st St., Yankton, South Dakota.

A quorum was determined with the following members answering the roll call: Senator Jean Hunhoff; and Representatives Peggy Gibson and Timothy Johns (Chair). Senator Mike Vehle (Vice Chair) joined the meeting following the roll call. Senator Angie Buhl O'Donnell and Representative Anne Hajek were excused. Staff members present were Doug Decker, Code Counsel, and Kris Schneider, Senior Legislative Secretary.

All material distributed at the meeting is attached to the original minutes on file in the Legislative Research Council (LRC). For the purpose of continuity, these minutes are not necessarily in chronological order. This meeting was recorded by South Dakota Public Broadcasting. The archived recording is available at the LRC website at <http://legis.sd.gov> under "Interim."

Governor's Office New Administrative Rules Website

Mr. Dusty Johnson, Chief of Staff, and **Ms. Laura Ringling**, Policy Analyst, provided information on a new website. The executive branch is implementing a rules website regarding the administration rules promulgation process. The website can be found at <http://rules.sd.gov>. It will provide a centralized location for the public to view and obtain copies of all the proposed rules and supplemental information (i.e. fiscal note, notice of hearing, and the small business impact statement), allow the public to make electronic comments directly to the agency or board, and will archive all the information pertaining to the rules. It also provides a link to the LRC's website.

Approval of Minutes

Representative Gibson moved, seconded by Senator Hunhoff, that the minutes of the September 17, 2013, meeting be approved. Motion prevailed on a roll call vote with 4 ayes, 2 excused. Members voting aye: Gibson, Hunhoff, Johns, and Vehle. Members excused: Buhl O'Donnell and Hajek.

Rules Reviewed

Department of Education: Board of Education – Amend Extraordinary Costs rules to revise and clarify the application, approval, distribution, and expenditure process for requesting extraordinary cost funds and reduce the number of mandatory meetings of the Extraordinary Cost Oversight Board; amend the Professional Teachers and Professional Administrators rules to remove unused definitions, change the article titles, and move the teacher performance standards rule to another article; adopt Cooperation in Education rules to set deadlines, requirements, and criteria for approval of school district consortium agreements and whole grade sharing agreements; and amend Teacher Performance Standards and Evaluation rules to update references and allow a school district to use its own process for evaluating teachers as long as certain criteria is met.

Ms. Tami Darnall reviewed the proposed rules.

Public Testimony

Mr. Travis Lassefer, New Underwood, questioned what information is shared between school districts. In response to the question, **Ms. Bobbie Rank** stated school districts share only resources, not student data.

Representative Gibson moved, seconded by Senator Vehle, that the review of the rules proposed by the Department of Education: Board of Education is complete. Motion prevailed on a roll call vote with 3 ayes, 3 excused. Members voting aye: Gibson, Johns, and Vehle. Members excused: Buhl O'Donnell, Hajek, and Hunhoff.

Department of Labor and Regulation: State Plumbing Commission – Amend a rule to increase the fee for residential plumbing inspections.

Mr. Mike Richards reviewed the proposed rule.

Representative Gibson moved, seconded by Senator Vehle, that the review of the rule proposed by the Department of Labor and Regulation: State Plumbing Commission is complete. Motion prevailed on a roll call vote with 3 ayes, 3 excused. Members voting aye: Gibson, Johns, and Vehle. Members excused: Buhl O'Donnell, Hajek, and Hunhoff.

Department of Revenue: Commission on Gaming – Amend Gaming rules to allow licensees to immediately review available surveillance or slot machine event logs in the event of a possible patron dispute; allow manufacturers to be responsible for minimum bankroll requirements and to clarify the requirement for 85 percent of immediate exposure to be in cash; add Dealer Bust 21 to the list of authorized blackjack games; recognize the Legislature's increase in wage limits passed in 2012; add Fortune Pai Gow poker to the list of authorized poker games; allow variations in the payout of the game of Texas Hold'em to include variations known as High Hold'em and Low Hold'em; define "static jackpot award"; recognize a request from industry to allow manufacturers to pay static jackpot awards; allow for static jackpot awards to be paid by annuity; allow licensees liable for payment of prizes in

excess of \$100,000 to utilize minimal bankroll requirements rather than utilize cash deposits or performance bonds; allow the Commission to require performance bond for static jackpot awards; allow for licensed manufacturers to pay jackpot awards; clarify the requirements of server-supported gaming system; clarify the requirements for server-supported gaming systems; update existing rules to comply with a prior change which allows 6 to 5 payout odds in blackjack; and exempt linked progressive slot machines with a denomination of five cents or less from the requirements of surveillance coverage until the progressive award reaches \$5,000.

Mr. Larry Eliason, Mr. Craig Sparrow, and Mr. Mike Shaw reviewed the proposed rules.

Representative Gibson moved, seconded by Senator Vehle, that the review of the rules proposed by the Department of Revenue: Commission on Gaming is complete. Motion prevailed on a roll call vote with 3 ayes, 3 excused. Members voting aye: Gibson, Johns, and Vehle. Members excused: Buhl O'Donnell, Hajek, and Hunhoff.

Department of Labor and Regulation: Division of Insurance – Amend rules to update a short term major medical advertising disclosure; update the standards for determining the hazardous financial condition of an insurer; change a cross reference; and establish standards for multiple employer trusts.

Ms. Mallori Barnett, Ms. Melissa Klemann, and Mr. Frank Marnell reviewed the proposed rules.

Senator Vehle moved, seconded by Representative Gibson, that the review of the rules proposed by the Department of Labor and Regulation: Division of Insurance is complete. Motion prevailed on a roll call vote with 3 ayes, 3 excused. Members voting aye: Gibson, Johns, and Vehle. Members excused: Buhl O'Donnell, Hajek, and Hunhoff.

Department of Human Services: Division of Developmental Disabilities – Amend rules to combine all rules relating to developmental disabilities under one section to improve accessibility and ease of locating rules; repeal obsolete and unnecessary provisions; update terminology and definitions; update requirements for certification of community support providers; provide clarification regarding rights of participants; update community support provider requirements when dealing with abuse, neglect, and exploitation; update requirements for submission of critical incident reports by community support providers; clarify procedures for appeals, grievances, and rights restrictions; clarify administrative requirements for community support providers; update and clarify service standards for community support providers; update requirements of community support providers for safety, sanitation, and physical facilities; update requirements for medication administration and health care services through community support providers; include a new chapter describing the comprehensive Home and Community Based Services Medicaid waiver; update and clarify requirements of the Family Support Medicaid Waiver services as well as generally funded Family Support services; update the regulations involving Community Training services; update rules involving Respite services; and include Preadmission Screening and Resident Reviews regulations.

Ms. Gloria Pearson, Secretary of the Department of Human Services, and **Mr. Dan Lusk** reviewed the proposed rules.

Public Testimony

Mr. Robert Kean, Pierre, South Dakota Advocacy Services, spoke in support of the proposed rules.

Representative Johns moved, seconded by Senator Vehle, that the review of the rules proposed by the Department of Human Services: Division of Developmental Disabilities is complete. Motion prevailed on a roll call vote with 3 ayes, 3 excused. Members voting aye: Gibson, Johns, and Vehle. Members excused: Buhl O'Donnell, Hajek, and Hunhoff.

Department of Social Services: Board of Examiners of Psychologists – Amend rules to increase the fee for licensure renewal, repeal an obsolete provision, and update supervision requirements.

Dr. Frederick Magnavito, President of the Board, **Ms. Carol Tellinghuisen**, and **Ms. Paula Spargur** reviewed the proposed rules.

Representative Johns moved, seconded by Senator Vehle, that the review of the rules proposed by the Department of Social Services: Board of Examiners of Psychologists is complete. Motion prevailed on a roll call vote with 3 ayes, 3 excused. Members voting aye: Gibson, Johns, and Vehle. Members excused: Buhl O'Donnell, Hajek, and Hunhoff.

Department of Agriculture – Adopt rules to require additional labeling for dairy producers selling bottled raw milk direct to the consumer and set basic sanitary standards for the product.

Mr. Lucas Lentsch, Secretary of the Department of Agriculture, and **Ms. Courtney De La Rosa** reviewed the history of the process that had been followed and the changes the department had made to the proposed rules since the last meeting.

Public Testimony

Ms. Doneen Hollingsworth, Secretary of the Department of Health, and **Dr. Lon Kightlinger** spoke in support of the proposed rule changes regarding the testing of raw milk and provided statistical data on reported illnesses from raw milk in South Dakota and surrounding states.

Mr. Mike Cypher, Hartford, member of the South Dakota Dairy Producers' board, read a letter from the dairy producers stating they support the proposed rule changes.

Ms. Lila Streff, Custer, Black Hills Goat Dairy, spoke in opposition to the proposed rules. She believes unpasteurized milk is a low risk food and does not need further regulations. She asked that the rules not be approved.

Ms. Gena Parkhurst, Rapid City, spoke in opposition to the proposed rules. She consumes raw milk for health reasons. She stated that in her opinion the department does not have the authority to promulgate the proposed rules.

Mr. Lassefer, New Underwood, spoke in opposition to the proposed rules. He voiced concerns with the cost of the new testing requirements.

Representative Scott Craig, Rapid City, representing District 33, spoke in opposition to the proposed rules. He voiced concern with the described dangers of consuming raw milk. He stated that cancer patients are advised to avoid processed foods and consume raw milk. He discouraged further regulation of raw milk.

Senator Phil Jensen, Rapid City, representing District 33, spoke in opposition to the proposed rules. He believes the consumption of raw milk is a freedom issue and the proposed changes will run the raw milk producers out of business. He asked that the rules be reverted back for the Legislature to take up the matter during the next legislative session.

Ms. Sara Impecoven, Sioux Falls, spoke in opposition to the proposed rules. She believes that raw milk is healthier than milk sold in stores.

Mr. Lealand Schoon, White River, spoke in opposition to the proposed rules. He stated there were several typos and conflicts within the proposed rules. He believes the department is overregulating raw milk.

Ms. Carolyn Ness, Rapid City, spoke in opposition to the proposed rules. She stated the issue was food freedom. The consumer can only purchase it from the producer. The department does not need further regulations.

Mr. Francis Dicesare, Rapid City, spoke in opposition to the proposed rules. He stated the additional labeling requirements will mean an increase in price. He believes it is a restraint of trade and asked that the rules not be approved.

Ms. Charisima Stratmeyer, Rapid City, spoke in opposition to the proposed rules. She stated that if the "warning" labeling requirement is passed, that pasteurized milk should also be required to state that consumption of it can cause certain other health effects.

Ms. Holly Waddell, Shadehill, spoke in opposition to the proposed rules. She stated that Form 14, the Small Business Impact Statement needed additional information.

Ms. Dawn Habeck, Belle Fourche, Black Hills Milk, spoke in opposition to the proposed rules. She stated that because of the regulations on raw milk, they are losing their land and will not be able to keep their Grade A permit.

Ms. Donna Delaney, Rapid City, spoke in opposition to the proposed rules. She agreed with the others who opposed the rules. If she consumes homogenized milk, she breaks out with hives.

Ms. Sunshine Minzlaff, Sturgis, spoke in opposition to the proposed rules. She agreed with the others who opposed the rules. She consumes raw milk for health reasons.

Mr. William Aycock, Spearfish, spoke in opposition to the proposed rules. He does not believe that the Department of Agriculture has the statutory authority to promulgate the rules.

In response to the public testimony, Secretary Lentsch reviewed the reasons for the proposed regulations and stated the rules process had been followed. In response to a question if the rules will limit the drinking or selling of raw milk, Secretary Lentsch responded that they do not.

Representative Johns concisely outlined the regulatory authority of the Department of Agriculture to promulgate the rules under the statutes, the committee's authority to review the rules, and the opportunity for the opponents to petition the Department for a delay in the effective date of the rules.

Representative Gibson moved, seconded by Representative Johns, that the review of the rules proposed by the Department of Agriculture is complete. Motion prevailed on a roll call vote with 4 ayes, 2 excused. Members voting aye: Gibson, Hunhoff, Johns, and Vehle. Members excused: Buhl O'Donnell and Hajek.

Department of Agriculture: SD Value Added Finance Authority – Amend rules to make changes to the value added subfund rules upon moving the fund from the Governor's Office of Economic Development to the Department of Agriculture; through the South Dakota Value Added Finance Authority.

Ms. Teri LaBrie reviewed the proposed rules.

Representative Gibson moved, seconded by Senator Hunhoff, that the review of the rules proposed by the Department of Agriculture: SD Value Added Finance Authority is complete. Motion prevailed on a roll call vote with 4 ayes, 2 excused. Members voting aye: Gibson, Hunhoff, Johns, and Vehle. Members excused: Buhl O'Donnell and Hajek.

Department of Game, Fish and Parks – Amend a Mountain Lion Hunting Season rule to decrease the total mountain lion harvest limit from 100 to 75 lions and the female harvest limit from 70 to 50 lions within the Black Hills Fire Protection District; and in Custer State Park increase the number of hunting intervals when dog hunting is allowed from 3 to 4 and decrease the number of hunting intervals when no dog hunting is allowed from 5 to 4, resulting in 136 mountain lion licenses issued.

Mr. Tony Leif reviewed the proposed rule.

Representative Gibson moved, seconded by Representative Hunhoff, that the review of the rule proposed by the Department of Game, Fish and Parks is complete. Motion prevailed on a roll call vote with 4 ayes, 2 excused. Members voting aye: Gibson, Hunhoff, Johns, and Vehle. Members excused: Buhl O'Donnell and Hajek.

Chair Johns stated that he would grant the request to waive the five day service requirement of the Department of Game, Fish and Parks for the following set of rules.

Department of Game, Fish and Parks – Amend rules to add Sheps Canyon Horse Camp to the list of areas that require an equestrian campground fee and increase camping permit fees; increase the fees to reserve picnic shelters, purchase firewood, adjust the fees to use certain park facilities and authorize fees for new services and facilities; raise resident and nonresident hunting and fishing license fees; add a new section which, with certain exceptions for law enforcement and emergency personnel, would prohibit the use of external felt soled footwear including boots and waders in the waters of the state; change the statewide possession limits for all species in inland waters from two to three times the daily limit; change the possession limit for yellow perch from 15 to 30 fish on South Dakota-Minnesota boundary waters; add East and West Heritage GPS ponds to the list of waters with a 15-inch minimum length limit for largemouth and smallmouth bass and remove current walleye limits on Lake Oahe of 8 daily of which at most four can be 15 inches or longer in length, and 24 in possession, and instead apply statewide walleye harvest restrictions; modify ARSD 41:07:06:01 to include spearing of rough fish in South Dakota-Minnesota boundary waters and repeal ARSD 41:07:06:01.02 pertaining to spearing rough fish in South-Dakota-Minnesota boundary waters; modify ARSD 41:07:06:03 to remove subsection (7) which allows game fish spearing in certain waters in Eastern South Dakota, add South Island Lake and county designations for North and South Island Lakes which allows northern pike to be taken in inland waters except those managed for muskies; revise language that allows the director of the Division of Wildlife to temporarily open game fish spearing for special events areas otherwise closed to game fish spearing; modify ARSD 41:09:04:02.02 pertaining to species that may be taken as bait for commercial use to allow emerald shiners and spottail shiners to be taken and sold by any licensed resident bait dealer or sold by any licensed nonresident bait dealer; modify ARSD 41:09:04:02.04 pertaining to species that may be taken as bait for noncommercial use to allow golden shiners, emerald shiners, spottail shiners and dead gizzard shad to be transported away from the water from which they were taken to be used as bait; modify ARSD 41:09:04:03 pertaining to waters closed to the taking of bait.

Mr. Doug Hofer and **Mr. Leif** reviewed the proposed rules.

Representative Johns moved, seconded by Representative Gibson, that the review of the rules proposed by the Department of Game, Fish and Parks is complete. Motion prevailed on a roll call vote with 4 ayes, 2 excused. Members voting aye: Gibson, Hunhoff, Johns, and Vehle. Members excused: Buhl O'Donnell and Hajek.

Department of Transportation – Repeal Speed Limit rules in Bennett County on State Highway 73 beginning at its junction with U.S. Highway 18 north to the Bennett County line and at the Jackson-Bennett County line north to 3.0 miles north of its junction with State Highway 44; and amend Informational, Directional Signs – On Right-of-Way rules to add definitions for "Amusement", "Attraction", "Cultural", "Historical", and "Leisure" in accordance with legislation authorizing attractions as a qualifying type of business service for motorists

eligible for informational, directional signage; add "attractions" to provisions directing the location of sign panels; repeal rules that establish criteria for the location and spacing of panels at interchanges and intersections; repeal a rule establishing criteria for the location and spacing of supplemental panels; clarify the maximum number of allowable signs; establishing the location of supplemental panels is being amended to include panels for "attractions"; clarify that the business is allowed signage only at the closest intersection or interchange; amend the number of allowable panels to a maximum of 4 at an intersection or interchange approach, and add "attractions" as a business category; establish the order of priority if the number of services for motorist types exceed the number of panels and supplemental panels allowed; add "attractions" as a type of business category allowed on panels and supplemental panels; reference the established national standard for the sheeting requirements, and add a new subsection limiting the number of symbols and business names on a business sign; repeal the requirement for a public access telephone; require the business to be open for 4 consecutive months of the year instead of May 1 to September 30; repeal the requirement that businesses providing gasoline also offer tire repair, oil and potable water; reduce from 3 to 2 the number of daily meals that must be provided by businesses providing food services; and require attractions to have drinking water and modern sanitary facilities; add that there is no application fee for trailblazing signs, and repeal the priority given food service businesses that provide the most services; the annual rental fee for business signs is being amended to include trailblazing signs located on a state highway; clarify that the department will install and remove signs on interstate and state highways; clarify when a business sign owner must notify the department of the suspension of the business operation; establish criteria for the allowance and location of trailblazing signs on a state highway; establish the requirements for the furnishing, repairing, installation and removal of trailblazing signs; and amend Business Signs size specifications.

Mr. Bill Nevin and Mr. Jason Humphrey reviewed the proposed rules.

Public Testimony

Mr. Jim Schade, Volga, Schade Winery, spoke in support of the proposed signage rules.

Representative Gibson moved, seconded by Representative Johns, that the review of the rules proposed by the Department of Transportation is complete. Motion prevailed on a roll call vote with 4 ayes, 2 excused. Members voting aye: Gibson, Hunhoff, Johns, and Vehle. Members excused: Buhl O'Donnell and Hajek.

Department of Environment and Natural Resources: Board of Water and Natural Resources – Amend a rule to make adjustments to the director areas of the South Central Water Development District.

Mr. Pete Jahraus reviewed the proposed rule.

Senator Vehle moved, seconded by Representative Johns, that the review of the rule proposed by the Department of Environment and Natural Resources: Board of Water and Natural Resources is complete. Motion prevailed on a roll call vote with 3 ayes, 3 excused.

Members voting aye: Gibson, Johns, and Vehle. Members excused: Buhl O'Donnell, Hajek, and Hunhoff.

Next Meeting

The next meeting of the Interim Rules Review Committee will be on Tuesday, December 17, 2013.

Adjournment

Representative Gibson moved, seconded by Senator Vehle, that the meeting be adjourned. Motion prevailed on a roll call vote with 3 ayes, 3 excused. Members voting aye: Gibson, Johns, and Vehle. Members excused: Buhl O'Donnell, Hajek, and Hunhoff.

Chair Johns adjourned the meeting at 3:11 p.m.



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